

REMARKS

Reconsideration of the present application is respectfully requested.

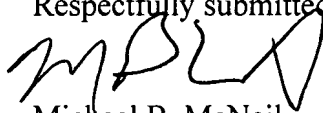
Applicants are required to elect one of three supposed subspecies, which are all parts of claim 11. Applicants are puzzled by the subspecies election requirement since there appears to be no support in the MPEP or case law for requiring an Applicant to effectively amend their independent method claim as was apparently done in this case. One of the features of Applicants' method claims is that any one of the three available closing modes is capable of being selected with a fuel injector compatible with each of the three available end modes. Providing a system that affords this selection capability is one of the aspects of the invention, rather than an identification of distinct subspecies of an invention. Thus, the subspecies election requirement is traversed as being neither cogent nor supported by any directive in the MPEP or relevant case law. In fact, Applicants have no idea how to respond to the subspecies election requirement without effectively deleting subject matter from claim 11, which the Examiner has no right to insist upon. The claim is neither a Markush claim, nor a "Markush like" claim (whatever that is?) as apparently found by the Examiner.

As best understood, Applicants elect cc of the three the subspecies, but demand that claim 11 be examined in full; not some truncated version of the claim. Applicants are making this provisional election arbitrarily and with no preference so that the Examiner cannot assert non-responsiveness because of Applicants' questioning of the propriety of making the election requirement. Applicants invite the Examiner to read and examine claim 11 in a manner consistent with Applicant's specification, not stripped of features that make it patentable. Applicants respectfully request that the subspecies election requirement be withdrawn. Applicants identify claims 11-20 as being readable on the elected subspecies, as best understood.

Nevertheless claim 11 has been amended based upon the Examiner's indication in a telephone conversation that he only should have to examine one of the closing mode steps. The claim now makes it explicitly clear by the inclusion of the additional step of providing a fuel injector compatible with each of the closing modes that the claim cannot be misread onto a method of operating a fuel injector compatible with only the elected one of the end modes. Surely this renders the claim as something different from a "Markush like" claim, but again, Applicants do not even know what that is. The Examiner is reminded that election requirements

are a tool to avoid overburdening an examiner, not a tool to be arbitrarily wielded to avoid examining an applicant's invention on the merits and hinder prosecution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. B. McNeil', written over the printed name.

Michael B. McNeil

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